IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 93 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
n'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

MIHIR TEXTILES LTD., NOW, MAFATLAL GAGALBHAI TEXTILE LTD

Appearance:

1. INCOME TAX REFERENCE No. 93 of 1987

MR MANISH R BHATT for Petitioner No. 1

MR JP SHAH for Respondent No. 1

MR MANISH J SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 28/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference two questions are referred for our decision at the instance of the revenue and five questions are referred at the instance of the assessee.

All the questions pertain to assessment years 1980-81 and 1981-82. We take up the questions ad seriatum :

2 The following question is referred at the instance of the revenue :

(1) "Whether, the payments on account of Medical Insurance and Accident Insurance premium were liable to be included while calculating the disallowance under section 40A(5) of the Act?"

Learned Counsel for the parties agree that the question referred is concluded in favour of the assessee in the case of Cama Motors, 234 ITR 699. We accordingly answer the question in the negative i.e. in favour of the assessee and against the revenue.

3. The following question is also referred at the instance of the revenue :

(2) "Whether, a sum of Rs.46,610/- paid to M/s. Mettur Heardshell Ltd. was allowable as a deduction ?"

Learned Counsel for the parties agree that the aforesaid sum of Rs.46,610/- paid by way of royalty is held to be revenue expenditure as per the decision of this Court in Commissioner of Income Tax vs. Ashoka Mills, 218 ITR 526.

We accordingly answer this question in the affirmative i.e. in favour of the assessee and against the revenue.

4 Next five questions are referred at the instance of the assessee :

(1) "Whether, on the facts and circumstances of the case the Appellate Tribunal was right in law in holding that the disallowance is required to be made u/s.40(c) out of the remuneration paid to the Managing Director notwithstanding the fact that the remuneration was reasonable having regard to the business requirements of the Company."

In view of the consensus between the Counsel for the parties that the controversy raised herein is concluded in favour of the revenue in Income Tax Reference No.594 of 1980, we answer this question in the affirmative i.e. in favour of the revenue and against the assessee.

5. At the instance of the assessee, question No.2 referred to us is as under :

(2) "Whether, the Appellate Tribunal was right in law in holding that commission is required to be included while computing the disallowance u/s.40(c)?"

Here also, there is consensus that the controversy has been concluded in favour of the revenue as per the decision of this Court in Commissioner of Income Tax vs. Rohit Mills Ltd., 219 ITR 228. We accordingly answer this question in the affirmative i.e. in favour of the revenue and against the assessee.

6. At the instance of the assessee the following question No.3 has been referred to us :

(3) "Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in confirming the disallowance of Rs.30,577/- invoking the provisions of Sec.37(5) of the Income-tax Act,1961 ?"

The question pertains to the amount of expenditure incurred by the assessee for maintenance of house at Bombay. The Tribunal has given a finding of fact that these premises were used by the assessee for accommodating the officers and executives as and when they were on official business on behalf of the Company. In view of this finding and the decision of this Court in Commissioner of Income Tax vs. Kaira District Co.operative Milk Producers' Union Ltd.,209 I.T.R. 898, we answer the question in the negative i.e. in favour of the assessee and against the revenue.

7. The fourth question which has been referred at the instance of the assessee is as under :

4. "Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the bank guarantee commission was an expenditure of capital nature ?"

In view of the decision of the Apex Court in Commissioner of Income Tax vs. Sivakami Mills Ltd., 227 I.T.R.465 taking the view that guarantee commission given to the Bank is revenue expenditure irrespective of the nature of expenditure, we answer this question in the negative i.e. in favour of the assessee and against the revenue.

8. The fifth question referred to us at the instance of the assessee is as under :

(5). "Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in holding that the expenditure incurred by the Company in connection with amalgamation proceedings were not deductible while computing the total income ?"

Mr.Shah appearing for the assessee has invited our attention to the decision of the Apex Court in Commissioner of Income Tax vs. Bombay Dyeing and Mfg.Co.Ltd., 219 I.T.R.521, wherein it is held that expenditure incurred towards professional charges paid to a firm of solicitors for the services rendered in connection with the amalgamation was in the course of the assesses business and therefore deductible as revenue expenditure. Mr.Shah further points out from para 9 of the order of the Tribunal that the disputed amount consists of fees paid to various Advocates amounting to Rs.30,577/- in connection with the amalgamation proceedings as well as another amount of Rs.6,835/- being the expenditure incurred towards Chairman and Staff appointed under the direction of this Court for convening the statutory meeting under the Companies Act.

9. In view of the decision of the Apex Court in Commissioner of Income Tax vs. Bombay Dyeing and Manufacturing Co.Ltd.,(Supra) and looking to the nature of the expenses incurred by the assessee we answer the question in the negative i.e. in favour of the assessee and against the revenue.

10. The Reference is disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah, J) (D.A.Mehta, J)

m.m.bhatt